

Before the  
Federal Communications Commission  
Washington D.C. 20554

In the Matter of	)	
	)	
Telecommunications Relay Service and	)	CC Dkt No. 98-67
Speech-to-Speech Services for Individuals	)	
with Hearing and Speech Disabilities	)	CG Dkt. No. 03-123
	)	
	)	

REPLY COMMENTS OF COMMUNICATION SERVICE FOR THE DEAF  
PETITION FOR VRS INTEROPERABILITY

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## SUMMARY

CSD urges the FCC to require all VRS providers to make their services and equipment and interoperable with each other so that people who are deaf and hard of hearing can have VRS communications that are functionally equivalent to voice telephone conversations. Considerable dissatisfaction with having a closed VRS system – by consumers and providers alike – is reflected by the overwhelming majority of comments submitted in support of the Petition for Interoperability. CSD submits the following points in response to arguments made by Sorenson Media, the sole VRS provider that refuses to make its equipment interoperable:

- The distribution of free video devices constitutes a prohibited financial incentive in exchange for VRS minutes if these devices block VRS calls to other providers, because consumers are forced to make all of their VRS calls only from those devices.
- VP-100 users do not truly have a choice of VRS providers because in order for them not to use their VP-100s for VRS calls, they must incur added expenses, acquire multiple devices, and overcome technical difficulties not required of hearing people using voice telephone services.
- It is technically feasible for Sorenson to make its VP-100s interoperable with other VRS, as evidenced by the fact that VP-100s were at one time interoperable.
- The NECA TRS Fund should not be used to support a closed dialing system that complicates VRS calling. Information and licensing arrangements to achieve dialing parity with other VRS providers may already be within Sorenson's control; to the extent that they are not, negotiations could be conducted among the various providers to achieve such parity.
- Incoming calls to Sorenson VP-100 users are still blocked because these users routinely give out their VRS "telephone numbers" to hearing people, but those numbers cannot be accessed through

other providers. Sorenson acknowledges the difficulties associated with making incoming video calls using dynamic IP addresses.

- Sorenson's solution to handle emergency calls by pushing these to the front of the queue is potentially over-inclusive because it may permit non-emergency calls to receive selective treatment in violation of the FCC's rules. The solution is also under-inclusive because it may fail to capture all emergency calls. This solution is also not practical in the event of a widespread regional or national emergency.
- Market forces have not been effective as a means of ending discrimination against people with disabilities and cannot be relied upon here to ensure that deaf and hard of hearing people are receiving functionally equivalent VRS. The fact that there is no VRS interoperability shows that market forces have again failed consumers.
- The FCC's decision to lift the AOL-Time Warner condition of interoperability was based on several criteria that are not present in the instant situation, including AOL's declining share of the AOL market, the refusal of AOL's competitors to interoperate with one another, the Commission's interest in AOL's video streaming service, and technical difficulties with providing IM interoperability.
- Sorenson is inappropriately trying to recoup the costs of its VP-100s through the TRS Fund despite the FCC's repeated statements that this fund only is intended to reimburse the costs of providing services. Sorenson is also intentionally withholding VP-100s from direct sale to consumers and state equipment distribution programs, both of which offer alternatives for recouping equipment investments.
- Innovation would be enhanced, not diminished, by an interoperability mandate because it would give competitors more reason to believe that if they improve their products, they will be rewarded with a fair market share.
- Video devices are the new form of SCPE that is used by deaf and hard of hearing consumers to establish communication; when these devices deny access, they violate Section 255's prohibitions against disability discrimination.



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Individuals with Hearing and Speech )  
Disabilities ) CG Docket No. 03-123  
 )

## I. Introduction

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the only VRS provider that refuses to make its services and equipment interoperable.



## II. Arguments

### **1. Sorenson's restrictive system violates the Commission's rules and Section 255.**

Sorenson claims that its system of blocking calls to other VRS providers does not violate federal law. CSD disagrees. The FCC has stated that “any kind of financial incentive or reward for a consumer to place a TRS call, including minimum usage arrangements or programs (whether or not tied to the acceptance of equipment), violates Section 225 of the Communications Act.”<sup>1</sup> When Sorenson distributes its VP-100s to consumers completely free of charge, and then blocks those users from making any VRS calls through other providers, it is essentially rewarding those consumers with a free video device (and the ability to make free point-to-point calls) in exchange for having the consumers use its service for VRS.<sup>2</sup> Not only do these consumers have a financial *incentive* to use the VP-100 for VRS, in fact, they are *forced* to do so because Sorenson has erected a barrier to all other providers. For this reason – among the many others set forth in CSD's initial comments – the arrangement that Sorenson has created should be deemed impermissible.

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<sup>1</sup> *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, Declaratory Ruling*, CC Dkt. No. 98-67; CG Dkt No. 03-123, DA 05-140 (January 26, 2005) at ¶2-3.

<sup>2</sup> Sorenson notes that it “provides unlimited point-to-point calls at no charge to its users and does not block dialing to other videophones for non-video relay service calls.” Sorenson at 12. But it is important to point out that Sorenson has chosen not to block such calls because it does not stand to gain financially by doing so. Unlike for VRS, Sorenson cannot receive any NECA reimbursement for point-to-point calls.

## **2. VP-100 users do not truly have their choice of VRS provider.**

Sorenson claims that its VRS solution does not inhibit a user's ability to choose because consumers may select from among eight VRS providers. However, Sorenson admits that in order for its customers to use other video devices to contact its competitors, those customers may need to acquire additional IP addresses and incur extra monthly charges to use those multiple VRS devices. As CSD noted in its initial comments, deaf and hard of hearing consumers should not be required to incur extra expenses in order to establish functionally equivalent communication with hearing people. Congress was clear in not wanting relay users to have to pay rates greater than those paid by voice telephone users in order to receive functionally equivalent telephone service.<sup>3</sup> Additionally, as also noted in our earlier comments, VRS users cannot receive functionally equivalent service if they must have multiple devices with respect to incoming calls (imagine if every VRS provider had its own equipment, and consumers were required to have eight different pieces of equipment). Not only is such a requirement burdensome and discriminatory – because it is not imposed on hearing people – but technical difficulties still may cause either the server or a device that is not turned on to reject incoming VRS calls from hearing people when multiple devices are in use.<sup>4</sup>

## **3. It is technically feasible to provide VRS interoperability.**

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<sup>3</sup> 47 U.S.C. § 225(d)(1)(D).

<sup>4</sup> Initial Comments of CSD (April 15, 2005) at 15-19.

Sorenson seems to imply that it would be technically infeasible to make its system interoperable. Specifically, Sorenson claims that it uses an “integrated system providing equipment, features, and services that cannot be separated or used independently.”<sup>5</sup> In fact, however, there was a period of time that Sorenson did allow its VP-100s to be interoperable with the services of other providers. It was only when Sorenson figured out that it could gain a competitive advantage in the VRS market by blocking access to other providers that it upgraded its equipment software to create this barrier. Put simply, there are no technical obstacles that would prevent Sorenson from opening up its equipment to the services of other VRS providers.

#### **4. Dialing parity should be extended to all VRS users.**

Sorenson acknowledges the many benefits of its videophone numbers, noting that this feature was specifically created to respond to consumers who found it easier to dial by static videophone number because the “number does not change and there is no need to acquire a static (fixed) IP address or domain name.”<sup>6</sup> It is precisely the ease of this dialing system that makes its closed nature discriminatory. If Sorenson is receiving money from the TRS Fund to operate this system, it should be available to everyone, so that all users have easy dialing access via VRS.

Sorenson argues that although it has access to specific communication protocols within its own video devices, and has the right to access information

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<sup>5</sup> Sorenson at 7.

<sup>6</sup> Sorenson at 11.

about its own customers needed to create its database for video phone number dialing, it “does not have the ability or the right to access information from other systems, nor does it have the capability to recognize or translate such information.”<sup>7</sup> Sorenson further claims that because the Sorenson VP-100 and D-Link are separate products using unique videophone numbers, the methods of dialing do not translate between devices, and Sorenson does not have the licensing rights to integrate these two dialing directories.

Sorenson’s arguments are questionable. In fact, the VRS server used by Sorenson exercises considerable control over the D-Links that it supports through the Sorenson chip-set and the LDAPs used by other VRS providers. Comments submitted by HOVRS confirm that “each and every Dlink video-phone – which uses the same Sorenson SVX chipset used in the VP-100 – whether used for VRS or for any other purpose – is similarly programmed to access a Sorenson server prior to making a third party connection.”<sup>8</sup> Indeed, a disturbing example of Sorenson’s control over D-Link units occurred a little more than a year ago, when CSD discovered that Sorenson was encouraging consumers to send their D-Links to Sorenson so they could be modified to become VP-100s. At an open house tour of its Austin, Texas center given by Sorenson in early spring 2004, Sorenson employees even informed visitors that they could send in their D-Link units to have them re-configured with

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<sup>7</sup> Sorenson at 12.

<sup>8</sup> HOVRS at 3 n. 2.

Sorenson firmware so they could become “better units.” Once this firmware was installed, the D-Link essentially “became” a VP-100, and was no longer capable of calling other VRS providers. CSD has reason to believe that similar changes to D-Links were achieved through software upgrades conducted via the network. Specifically, CSD is aware of several D-Links installed in public locations that “became” VP-100 units, seemingly as a result of actions taken by Sorenson installers. While these practices have ceased, they demonstrate the extent to which and ease by which Sorenson can exercise control over both the VP-100 and D-Link units.<sup>9</sup> In addition, when CSD has sought permission to modify D-Link firmware to improve upon the features and/or functionality of these units, D-Link has refused because of its agreements and restrictions currently in place with Sorenson Media. When viewed in light of the control that Sorenson now has over the VRS market, these anti-competitive practices raise serious legal concerns.

#### **5. Incoming calls are still effectively blocked.**

Sorenson claims that it does not block incoming calls because (1) hearing people can use the IP address of one of its users through another VRS provider and (2) Sorenson has recently removed the contractual provision prohibiting its customers from accepting calls from other VRS

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<sup>9</sup> Moreover, *even if* Sorenson did need to acquire access to additional information in the possession of other providers in order to provide dialing parity, negotiations could be conducted among the various providers to achieve such parity.

providers.<sup>10</sup> CSD believes that the removal of this contract clause is a step in the right direction. However, the difficulties associated with making incoming calls to the dynamic IP addresses of Sorenson's users continue to make these calls practically impossible. Sorenson's customers customarily give out their "phone numbers" to receive calls. But these phone numbers remain blocked to hearing people who attempt to call a Sorenson customer through a different provider. Sorenson itself acknowledged the difficulties of using changing IP addresses when, in a recent ex parte filing with the FCC, the company stated that "[u]sing IP addresses . . . has proved problematic because Internet Service Providers (ISP) frequently change the IP addresses assigned to users."<sup>11</sup> Hearing people do not have to provide multiple telephone numbers to potential callers, depending on the telephone carriers that their callers plan to use. It is extraordinary confusing and discriminatory to force this burden upon VRS users.

## **6. Sorenson's emergency call handling solution will not work.**

Sorenson explains that until there is an industry-wide solution for responding to VRS emergency calls, it plans to use software that

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<sup>10</sup> Sorenson also claims to have "never implemented technology to block incoming calls from other VRS providers." Sorenson at 15. However it is Sorenson's technology that creates the practical block by preventing outside VRS providers from putting calls through to its users' "telephone numbers."

<sup>11</sup> Sorenson Ex Parte Letter (April 21, 2005) at 6. Consumers commenting on this proceeding were especially concerned about the difficulties associated with using dynamic IP addresses to receive calls. See e.g., Comment of Charlotte Norrod, Docket 98-67 ("many deafies who own Sorenson, don't know how to find their ip addresses because their installers won't teach them how to find their ip addresses thru their computer for their videophone.")

automatically moves a caller in an emergency situation to the front of the queue for its next available CA.

For a number of reasons, CSD believes that this is a dangerous path to take. Absent any cross-industry standards or specific guidelines to distinguish among calls, calls from consumers are not likely to be treated consistently from provider to provider, nor even within a provider's own system. Far too much will be left to the guess-work of callers because these individuals will not know how to self-identify when their calls merit being moved up in queue. As a result, it is very probable that this system will encourage abuse by users who may self-identify an emergency call just to move ahead in the queue. The result will be a system that is over-inclusive and violates the FCC's proscription against selectively answering calls from preferred consumers and the FCC's directive that all calls be handled "in the order that they are received."<sup>12</sup>

On the other hand, if Sorenson uses a standard that excludes all but the most serious of emergencies, it runs the risk of making this arrangement under-inclusive – by denying prompt access to calls that might not need 911 services, but might otherwise be urgent. This might include, for example calls to one's doctor, or to a sick family member in need of assistance.

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<sup>12</sup> *Federal Communications Commission Clarifies that Certain Telecommunications Relay Services (TRS) Marketing and Call Handling Practices are Improper and Reminds that Video Relay Service (VRS) May Not be Used as a Video Remote Interpreting Service*, Public Notice, DA 05-141 (January 26, 2005) at 3.

The following comments, submitted in response to the Petition, reveal just how difficult it can be to determine where to draw the “go-to-the-head-of-the-queue” line. Many of these comments express frustration with not being able to make urgent calls on a timely basis. They describe situations that merit prompt attention, but that may fall short of needing to access 911 (grammar and spelling left in tact from commenters):

i think they should not block us calling other vrs as we have difficult time to get through . . . one of these calls is very important for my sister to call me to keep me posted about my brothers illness but she is complaining because she can't get through or when she calls then hang up and she waits for VRS to call her back but VRS never did . . .<sup>13</sup>

I have had some unreasonable delays in getting thru to [my deaf daughter] in the recent past weeks. One instance: I got a call from her hospital asking if I could contact her for them, as they could not get thru to her . . . I called her, explained they wanted her there early for an appt, but she said she had received a call telling her to come immediately. I thought she had misunderstood, so I asked her to wait so I could call the hospital back. I asked her to wait 10 minutes. I got right thru to her nurse, but could not get thru to call her back until she had given up and already left.<sup>14</sup>

A few months ago my mom called to Sorenson and waited and waited more than one hour or later and gave up and went to emergency room cuz she was very sick. Next day I got a message from my daughter sending me email and told me that Sorenson never called her back.”<sup>15</sup>

I have bladder cancer and in advanced stage. I need to make a lot of appts and see doctors and getting tested, etc. Whenever I use Sorenson, it is a long long wait to get a VRS interpreter. Sometimes, I have to wait 20-30 minutes. I cannot [sic] wait that long. I wish I have to wait long then try to use other VRS compnay [sic] or vendor but I

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<sup>13</sup> Comment of Janice & Tom Hickey (Docket 98-67).

<sup>14</sup> Comment of Dorothy Schaeffer (Docket 98-67).

<sup>15</sup> Comment of Monty Duckett, Sr. (Docket 98-67).



can't. Sorenson will not let me use other servies [sic]. This is not right."<sup>16</sup>

I rather use VRS relay but it really takes long time to answer me back cuz I have the serious health problems and I have doctors I need to call or I need to call my pharmacy for my medications, etc. . . I can't wait much longer for VRS to answer me back so I have to use my computer IP-Relay which I do not like because it is kind of hard for me to talk or explain what i need to talk with my doctor. The VRS Relay is best and much easy for me to talk with my doctor.<sup>17</sup>

An even greater problem with Sorenson's approach is that it does not address call handling in the event of a widespread emergency. On September 11, 2001, local network blockage/outages made it impossible for calls to be delivered to the IXC networks and the Baltimore and New York relay centers. The same occurred when hurricanes hit portions of Florida. In the event of a regional or national emergency that might create a heavy demand for VRS, consumers need to be able to reach multiple providers to find an interpreter that can handle their calls. Going to the head of the VRS queue will do no good if *everyone* is trying to do the same within a single provider's system. Although VRS is not yet designed for emergency call handling, the fact remains that for many deaf people, notably senior citizens, children, and people with limited English, VRS may offer their ONLY means of telephone access. As noted by HOVRS, in an emergency, VRS users need to be able to turn to a second, third or fourth provider.<sup>18</sup>

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<sup>16</sup> Comment of Ramiro Bustamante (Docket 98-67).

<sup>17</sup> Comment of Frances Schliep (Docket 98-67).

<sup>18</sup> HOVRS at 13.

As the FCC has previously stated, relay calls are supposed to be the equivalent of a dial tone, with the relay service acting as a transparent conduit. The more that CAs are entrusted to make decisions about calls based on content, the more these calls move away from this fundamental notion of relay services.

CSD agrees that until such time that there is a technical solution for handling emergency calls, VRS providers need to give these calls prompt attention. But the best way of accomplishing this is to eliminate the barriers created by Sorenson's block on outgoing calls, so that emergency callers will be able to get their call answered by one of among eight VRS providers, not to have each VRS provider independently apply its own call handling standards. The latter can only result in confusion and disorder for VRS users, who may never know when a call will qualify for special emergency handling.

## **7. The FCC cannot rely on market forces to eliminate discrimination**

Sorenson asks the Commission to rely on market forces, rather than government intervention, to determine the technology and equipment that is best suited for the provision of VRS. But the fact is that market forces have consistently failed people with disabilities,<sup>19</sup> and these forces have not succeeded here if the result for consumers is a non-interoperable VRS service.

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<sup>19</sup> Virtually every single piece of legislation addressing telecommunications access has been a response to the failure of market forces to respond to the needs of people with disabilities. In addition to Title IV of the ADA, the Telecommunications for the Disabled Act of 1982, the Hearing Aid Compatibility Act of 1988, Section 255, and the captioning amendments of the Telecommunications Act of 1996 have all been Congressional responses to the failure of competitive forces to safeguard the telecommunications needs of people with disabilities.

TRS is one area where both Congress and the FCC have always maintained a need for strict regulation; both the Act and the FCC's extensive mandatory minimum standards are a direct response to the failure of the market to sufficiently address relay user needs. Regulation is again needed to correct market failures that have denied VRS interoperability, so that Congress's intent to ensure functionally equivalent communication to deaf and hard of hearing VRS users can be fulfilled.

It is interesting that Sorenson insists that "better products and better services will result in greater market share."<sup>20</sup> If this is the case, then Sorenson has nothing to fear – if it truly provides the better VRS product, consumers will continue to use its services, even when they have the option of accessing the services of Sorenson's competitors. Rather than hold its consumers hostage, if Sorenson truly wants the marketplace to dictate VRS usage, it should open its system and let consumers choose on their own who offers the better service.

#### **8. Comparisons with the AOL-Time Warner merger remain applicable.**

The comparisons between the events surrounding the instant messaging condition imposed at the time of the AOL-Time Warner merger are not in any way diminished by the lifting of that condition. When the FCC imposed the interoperability condition, the Commission made clear that AOL had the right to petition for its removal if a material change in market

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<sup>20</sup> Sorenson at 25.

conditions took place, and this is precisely what occurred. Although AOL's share of the instant messaging market had been 100% in 1999, it dropped to 75.3% in March 2000 and hovered around 58% by the time AOL filed a petition for this relief in 2003.<sup>21</sup> The FCC concluded that this decline, coupled with the introduction of stable competitors, reduced the chance that AOL would be able to use an influx of customers to again gain market dominance.

The exact opposite holds true of the VRS industry. Since its entry into the VRS market in April 2003, the largest provider's share of the market has *increased* steadily and progressively. As an indication of its market strength, Sorenson now dictates the VRS rate for all VRS providers. If left unaddressed, VRS will become a monopoly service and consumers will lose entirely their choice of VRS providers. We urge the FCC to act now to prevent this from occurring.

Another significant difference between the instant situation and the events leading to the release of AOL's interoperability condition was the refusal of AOL's competitors, Microsoft and Yahoo! to interoperate with each other. The FCC interpreted this refusal as an indication of the strength of competition in the IM market.<sup>22</sup> By contrast, the fact that all VRS providers

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<sup>21</sup> *Authorizations by Time Warner Inc. and America Online, Inc.*, Transferors, to AOL Time Warner, Inc. Transferee, Petition of AOL Time Warner Inc. for Relief From the Condition Restricting Streaming Video AIHS, Memorandum Opinion and Order, Dkt. No. 00-30, FCC 03-193 (July 31, 2003) (Relief Order) at ¶6.

<sup>22</sup> Relief Order at ¶11.

– with the exception of the largest provider – are interoperable with each other demonstrates that the VRS market is not competitive without interoperability among these smaller companies.

Yet a third reason that the FCC lifted AOL’s interoperability condition was that the condition specifically limited AOL from providing AIHS streaming video service, a new and innovative Internet service. The Commission had an interest in promoting competition and innovation in this new field, and looked upon AOL to enhance the quality and features of video chat and other AIHS video services. In the instant situation, a condition of interoperability on the receipt of NECA funds would not in any way impose limitations on the largest provider – or any other provider – to further develop its VRS product. Rather, by providing more of an opportunity to compete, interoperability would offer added incentives for smaller providers to improve upon their own services.<sup>23</sup>

**9. NECA compensation is intended to reimburse costs for services, not equipment.**

In its comments, Sorenson says that the cost of the VP-100 and the training to use this equipment is borne by Sorenson and that “[b]y providing users with free equipment, Sorenson builds . . . user goodwill that is crucial to its ability to compete with better-funded VRS providers affiliated with

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<sup>23</sup> Yet another reason why AOL-Time Warner wanted relief from the condition of interoperability was because there were technical difficulties associated with achieving IM interoperability. No such technical difficulties are presented in the instant situation.

traditionally dominant common carriers.”<sup>24</sup> In its April 21, 2005 ex parte letter, Sorenson adds that it invested tens of millions of dollars in bringing an Internet videophone to the deaf and hard of hearing communities and that “[i]t is unrealistic for Sorenson to be forced to allow competitors to benefit from Sorenson’s extensive investment”<sup>25</sup> Sorenson suggests that if it were required to make its equipment interoperable, other providers would benefit from Sorenson’s technology and receive additional TRS funds, while Sorenson might not realize a return on investment.

There are several problems with Sorenson’s argument. First, Sorenson seems to have an inaccurate expectation that TRS providers are entitled to cost recovery for the equipment that they distribute. However, the FCC has interpreted Section 225 as a statute designed to permit universal-type subsidies for video relay *services*, not equipment. By admitting that it needs to distribute its equipment for free to get a return on its investment, Sorenson is confirming that it is recouping the costs of that equipment through the TRS Fund. Not only does this violate the guidelines by which cost recovery is now dictated,<sup>26</sup> but it confirms that the Fund is being used to support a non-interoperable relay system.

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<sup>24</sup> Sorenson at 10.

<sup>25</sup> Sorenson ex parte letter at 4.

<sup>26</sup> Indeed, up until the provision of VRS, the provision of TRS services and equipment were separated: consumers acquired their TTYS by either purchasing these in retail establishments or acquiring them through state equipment distribution programs. They were not included in the costs of providing relay services.

Similarly, Sorenson suggests that other vendors have not spent any money on developing the VP-100. However, other vendors have had to purchase D-Links or software for the free distribution to consumers, in order to compete with Sorenson's free distribution program and its practices of maintaining a closed relay system. Yet from the start, other providers have kept their VRS systems interoperable, even when some of these providers held market dominance.

Second, Sorenson's suggestion that an interoperability mandate would keep it from recouping its investment in VP-100s ignores various alternatives for recovering these expenditures. Although Sorenson mentions that it is not reimbursed by equipment distribution program funds, it fails to mention that it *could* receive such reimbursement. For years, states have been purchasing TTYs for consumers to use with relay services, and currently, Indiana, Hawaii and Mississippi distribution programs already purchase and distribute D-Links for VRS consumers.<sup>27</sup> Additionally, in 2001, Texas's equipment distribution program distributed Sorenson's earlier EnVision product (used in the original Texas VRS trials) to consumers, paying Sorenson upwards of \$900 for each of these software products.<sup>28</sup> If

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<sup>27</sup> State distribution programs also purchase and distribute CapTel devices.

<sup>28</sup> The Sorenson Envision units worked in an enhanced mode only when calling other Envision units, to provide superior handling of calls. If another caller did not have an Envision unit, NetMeeting was used, as a lower standard default. However, all customers and providers were able to purchase Envision, and Envision was completely interoperable with NetMeeting and other video applications. As noted in our earlier comments, CSD does not oppose the development or use of proprietary technologies, so long as these remain interoperable with other services.

Sorenson's VP-100s were interoperable, state programs might be more willing to continue to purchase these devices as well.

Moreover, there is nothing to prevent Sorenson from selling its equipment directly to consumers. However, while D-Links are available for public purchase, Sorenson has intentionally withheld VP-100s from private sale. Interpreters and consumers recently attending the Texas Society of Interpreters for the Deaf Conference in Austin, Texas (on April 24, 2005) expressed concerns about the lack of interoperability that exists between VP-100 units and their inability to have a choice of VRS providers. These individuals asked about the possibility of being able to purchase a VP-100 to serve the interests of the public and other VRS providers, but Sorenson representatives on the panel confirmed that there are no plans to sell these devices. That Sorenson does not make this option available to consumers is further evidence of its intent to recoup its costs entirely through the TRS Fund. Sorenson should not be allowed to have it both ways: the company cannot purposely restrict market access to the one unit that controls its user base, and then complain that it needs money from the TRS Fund to recover its investment.

Finally, Sorenson's arguments that it is not recovering the costs of its equipment investments may be disingenuous. This is because D-Link makes its boxes under license from Sorenson. To the best of our knowledge, every time a D-Link is sold to VRS providers or consumers, Sorenson recoups its



investment costs through receipt of a portion of those funds (likely a license fee). Thus, the more VRS proliferates, the greater the source of funds flowing to Sorenson through the sale of D-Links by other VRS providers.<sup>29</sup>

**10. Innovation will not be impeded if interoperability is mandated.**

Sorenson threatens that if interoperability were required, incentives to develop innovations would disappear, because any new technology would be shared with other VRS providers without a return on investment. CSD believes that the opposite would occur. VRS is now on a path to becoming a monopoly service. The Commission would surely agree that incentives for innovation will increase, rather than decrease, in a competitive market.

Moreover, the record in this proceeding reflects considerable dissatisfaction with Sorenson's refusal to make this product interoperable. The National Association for the Deaf, for example, reports numerous complaints from deaf and hard of hearing individuals about having to "stockpile various relay products in order to be able to access multiple relay providers. . . ."<sup>30</sup> An interest in innovation is fine, but not if it intentionally restricts deaf and hard of hearing people to partial access in order to secure a

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<sup>29</sup> Moreover, although Sorenson states that it has spent tens of millions of dollars of investments on its VRS equipment, it is very likely that a sizeable portion of these expenditures went to the development of video products intended for multiple, and not just deaf, markets. But even assuming this amount is accurate, it is likely that Sorenson has already recouped these expenditures through the receipt of NECA monies. Sorenson recently reported to NECA that its average VRS cost per minute was \$5.347. The current reimbursement VRS rate is \$7.59. If, over the past several months, Sorenson has handled an average of 800,000 calls per month, the \$2.50 differential between Sorenson's actual costs and the compensation rate is already enabling Sorenson to recoup \$2 million in profit on a monthly basis.

<sup>30</sup> NAD at 5.

greater profit. As CSD has previously stated, we are not opposing the development or use of proprietary technologies; we too believe that it makes little sense for a company to go through the time and expense of developing an innovative technology, only to be required to distribute it to all providers. We are simply saying that if a proprietary technology is reimbursable by the TRS Fund, it should not be used in a way that intentionally blocks a consumer's access to other providers, if achieving interoperability is technically feasible. As noted by Hamilton Relay,

The blocking of an IP address in a packet-switched network is the equivalent of blocking a telephone number in a circuit-switched network. The Commission would not tolerate the purposeful blocking of telephone numbers without a customer's consent, and nor should it tolerate the purposeful blocking of IP addresses. Such a marketing practice is inconsistent with the goal of nondiscriminatory accessibility by the broadest number of users to public networks.<sup>31</sup>

#### **11. Sorenson's practices violate Section 255**

Sorenson claims that the VP-100 complies with Section 255 because it provides the requisite methods for inputting information and retrieving messages. In addition, Sorenson says it conducts market research, product design and product trials that include people with disabilities, and Sorenson works cooperatively with people with disabilities.

As the NAD notes, deaf and hard of hearing consumers are making a shift from using TTYs as their primary telephonic device, to using video

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<sup>31</sup> Hamilton at 2-3, citing 47 U.S.C. §256(a)(1). See also HOVRS at 1.n.1 (the California petition need not address whether a provider's proprietary software may allow persons to only use that software with the provider's VRS, so long as the software does not block the user from accessing other provider VRS).

devices as their new “SCPE,” or specialized customer premises equipment, in an IP-enabled world. We agree with the NAD that because the FCC has recognized VRS as a service intended to provide functionally equivalent telephone access, the new SCPE used to provide this access should be “open, accessible, and compatible with other providers and SCPE” under Section 255.<sup>32</sup> As the NAD states, [c]losed networks unfairly discriminate against relay services users because they deny them the same level of service that voice telephone users have.”<sup>33</sup> Hamilton Relay also points out that equipment that restricts a person’s access to certain callers does not satisfy Section 255’s usability requirement, especially where such access is readily achievable.<sup>34</sup>

### **III. Conclusion**

Sorenson has admitted that it blocks calls to other providers as a means of maintaining a competitive advantage over other VRS providers. Title IV of the ADA was not a law designed to expand corporate profits. It was a law designed in the public interest to achieve telecommunications service by people who are deaf, hard of hearing and speech impaired that is functionally equivalent to the telephone service available to hearing people. We urge the Commission to protect the public interest, by dictating an open and compatible VRS network that is equally accessible among all VRS users.

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<sup>32</sup> NAD at 13.

<sup>33</sup> Id; TDI at 6.

<sup>34</sup> Hamilton at 3, n. 2; See also HOVRS at 9-10.

Respectfully submitted,

/s/

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